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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,959	11/24/2003	Terry Lesenberg	L541.12-0001	5204
164	7590	05/10/2006	EXAMINER	
KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			SELF, SHELLEY M	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/720,959	Applicant(s) LESEBERG, TERRY	
	Examiner Shelley Self	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-8, 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 14-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 13, 2006 has been entered.

Specification

The amendment filed April 13, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material, which is not supported by the original disclosure, is as follows: *the shear is connected solely to the beam* (clms. 14-18).

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 14-18 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Neither the specification nor the drawings provide support for a *shear connected solely to the beam*. Explicitly, the drawings illustrate a shear constructed of a first and second blade pivotable about a common pivot pin; the shear connected to both a hydraulic cylinder and beam. Accordingly there is no support for the *shear connected solely to the beam* as set forth in claim 14.

Therefore, claims 14-18 have not been further treated on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davison (4,946,488) in view of White (3,913,641). Davison discloses a shear for mounting to an all-terrain vehicle comprising a frame (fig. 1) for connecting to a support structure of the all terrain vehicle, the frame comprising a first frame member (fig. 1) comprising a single stanchion; and a second frame member (fig. 1) comprising a single tube (24) pivotally connected (figs. 2, 4) to the first frame member (col. 2, line 20-22), the second frame member being transverse to the first frame member (fig. 1); a shear (18, 20; Abstract) attached to the second frame (fig. 1); and a

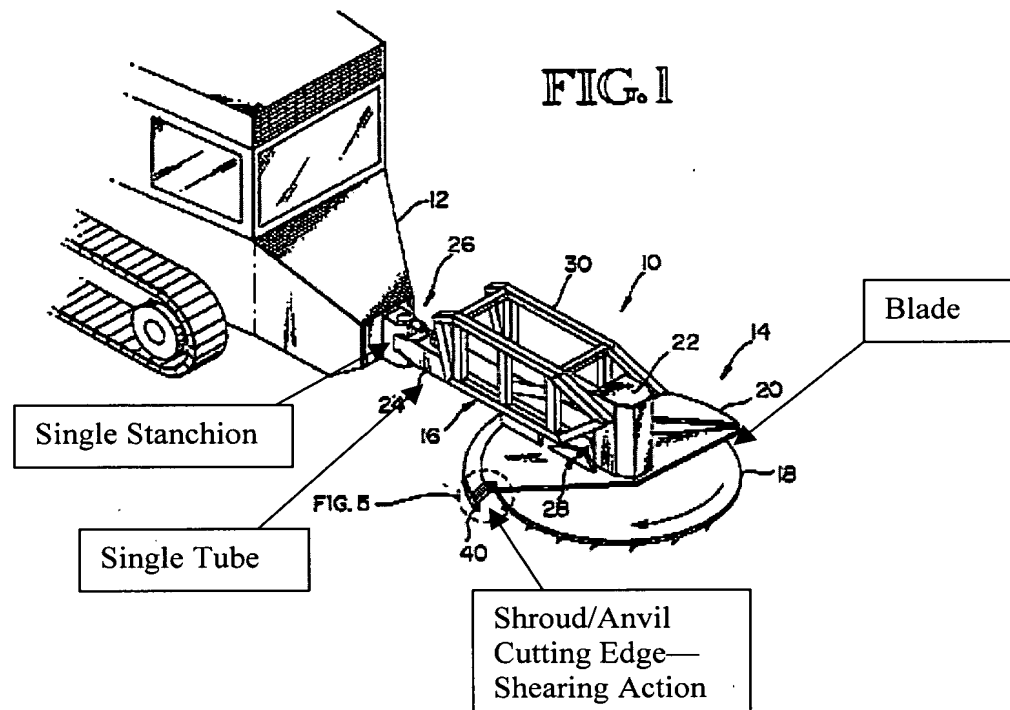
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hydraulic system (22) attached to the shear, the hydraulic system being mounted to the all-terrain vehicle (col. 2, lines 50-53).

As to the recitation, a shear, Examiner notes a shear to be a cutting action, via a cutting tool, because the rotary blade (18) and cutting edge of the shroud (20) further cut and dislodge cut vegetation/material the blade (18) and shroud (20) inherently work in a shear action.

As to the recitation of a “metal” tube, Davison is silent to the material of the tube. It would have been obvious at the time of the invention to one having ordinary skill in the art to construct Davison’s tube (24) and frame members of metal, because it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design mechanical expedients.

Furthermore, White teaches in a closely related art to construct the components of vegetation/tree cutting apparatus of steel/metal. White teaches the use of steel for its high tensile strength so as to maintain adequate strength for cutting vegetation/trees (col. 9, lines 30-34). Because the references are from a closely related art, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Davison’s components, i.e. tube and frame of metal for its high tensile strength so as to efficiently cut vegetation/trees as taught by White.



Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davison (4,946,488) in view of White (3,913,641) as applied to claim 1 above, and further in view of Emery (5,174,098). Neither Davison nor White disclose a separate power source.

Emery teaches in a similar art a vehicle apparatus for cutting/severing vegetation/tree. Emery teaches the use of plural power sources (col. 3, lines 14-15). Emery teaches a power source to power the vehicle and a second power source (30, 64) to power the cutting means for cutting vegetation (col. 3, lines 15-20). Additionally, Emery teaches the secondary power source (30) to be directly connected to a hydraulic pump (122, 124) for supplying hydraulic fluid via hydraulic lines (130, 132, 134) to the cutting/severing apparatus (col. 4, lines 5-17). Further Emery teaches a control system having valves and switches for controlling the hydraulic system (col. 4, lines 33-67 to col. 5, lines 1-67). Emery teaches that the use of a single power source to

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power a vehicle and a cutting apparatus may result in reduced or less than a predetermined amount of power supplied to the cutting assembly (col. 1, lines 49-53). Therefore, Emery teaches the use of separate power sources for powering the vehicle and the cutting assembly so as to deliver a predetermined amount of power to a cutting means (col. 2, lines 11-13) so as to efficiently cut/sever vegetation/tree. Because the references are from a similar art and deal with a similar problem, (i.e. powering a vehicle and an associated means for cutting) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Davison having a secondary, separate power source and hydraulic pump so as to supply a predetermined amount of power to the means for cutting for efficiently cutting/severing vegetation/tree as taught by Emery.

Allowable Subject Matter

Claims 3-8, 12 and 13 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or fairly suggest *first and second linking member, the first and second linking member pivotally connected to the first end of the first hydraulic cylinder about a common pivot point* in combination with the rest of the claimed limitations as set forth in claim 3.

As noted above, prior art reference Davison discloses a shear comprising a frame comprising a first and second stanchion mounted to an ATV and a shear mounted to a second end of the second frame member, such that the shear is pivotable via the tube (24) of the second member and its connection to the first frame member (fig. 1). Davison teaches that the rotary

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blade (18) is powered by a hydraulic motor (22) so as to cut/shear vegetation/tree. Davison further teaches that the shroud, partially covering the rotary blade (18) has a cutting edge (Abstract) the cutting edge of the shroud working in conjunction with the rotary blade (18) to shear and dislodge cut vegetation/material for efficient shearing. Davison does not disclose or fairly suggest, first *and second linking member, the first and second linking member pivotally connected to the first end of the first hydraulic cylinder about a common pivot point*. Instead, Davison is silent to any first and second linking members. Accordingly Davison neither anticipates nor render obvious the claimed invention as set forth in claim 3.

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claim 3. Therefore claims 3-8, 12, and 13 contain allowable subject matter over the prior art of record.

Response to Arguments

Applicant's arguments with respect to Albright have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that Albright fails to disclose or fairly suggest a tube. As noted above, Davison teaches this deficiency; accordingly a rejection is made in view of Davison.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf

May 4, 2006